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OLC 68-0356

10 June 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with Chairman David N. Henderson,
Subcommittee on Manpower and Civil Service,
Committee on Post Office and Civil Service,
Regarding S.1035 (Constitutional Rights of
Federal Employees)

1. This afternoon, Mr. Warner and I met with Chairman Henderson, Charles Johnson (Chief Counsel, House Post Office and Civil Service Committee), Mr. Francis T. Matchett (Investigator, House Post Office and Civil Service Committee), and Mr. Bun Benton Bray (Staff Director of the Manpower Subcommittee).

2. We began by explaining that the Director wished us to review plans for the upcoming hearing and to assure Mr. Henderson of our desire to be completely cooperative. We said that the Director much appreciated the invitation to appear, and we would appreciate any guidance which Mr. Henderson or his staff could give us so that the Director's presentation would be responsive to such questions as they might have in mind. We also referred to an unfortunate misunderstanding which had developed in connection with Senate consideration of S.1035, giving rise to accusations that the Agency's attitude had been uncooperative. We said we wanted to be sure of avoiding any misunderstanding on this occasion, and wanted to be as forthcoming as possible.

3. Chairman Henderson said that as far as he personally was concerned, he didn't think any such bill was necessary at all, and if such a bill were to be passed, he would prefer that the Agency be

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granted a total exemption. However, he explained that for political reasons he had to press for some legislation and, so far as an exemption for the Agency was concerned, would prefer that the Director specifically request it, if this was desired, rather than leave to Mr. Henderson the responsibility of initiating it. Mr. Henderson explained that he had a political problem in that he could not afford to be accused by his opponent of not supporting Senator Ervin, who enjoys strong support in his district.

4. Mr. Henderson said that one effective solution to our problem would be for Chairman Rivers, House Armed Services Committee, to appear before the Manpower Subcommittee and state flatly that he opposed the application of the bill to CIA.

5. Mr. Henderson read to us passages from a draft on his desk and said he planned to introduce it tomorrow at which time we would get a copy. Among the points he mentioned in reviewing this draft were the following:

a. It does not apply to applicants for a Government position ("they are fair game").

b. It does provide that any person brought up for formal disciplinary hearing shall have the right of counsel or other person of his choice.

c. A Government employee shall have the right to engage in any lawful activity and association consistent with his employment.

d. In the event of adverse decision or undue delay, an aggrieved employee can appeal to the Civil Service Commission which has the authority to direct corrective action.

e. In its presentation, the Agency should be prepared to comment on both S. 1035 and the Henderson proposal. Both will be considered by the Subcommittee but it is Henderson's hope that the language contained in his bill may be substituted for the language presently contained in S. 1035.

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6. Mr. Henderson feels that the Agency should prepare a fall-back position in the event complete exemption is not possible; Mr. Johnson suggested that this might take the form of vesting in the President authority to designate excepted agencies or activities.

7. In response to our question, Mr. Henderson said that he personally had no objection to the use of the polygraph in proper circumstances, but observed that for our own protection it might be well to keep a record of exactly what was said in order to defend ourselves against charges of improper questioning.

8. Mr. Henderson indicated he would be just as happy if the whole matter dragged on and no legislation was passed, but because of political pressures, he felt compelled to give the appearance of taking some initiative.

9. We explained to Mr. Henderson that one of our major concerns regarding S.1035 was its apparent conflict with certain provisions of other legislation by which the Director was bound. We pointed out his responsibility to terminate the employment of any employee whenever this was necessary in the interests of the United States; his responsibility for protecting intelligence sources and methods; his exemption from any requirement to publish or disclose the organization, functions, names, titles, salaries, etc., of the Agency; and the provision that the Director's determinations in certain personnel and other matters should be final and not be subject to review by any court.

10. In response to a further question, Mr. Henderson said that he would certainly support a request that the hearings be conducted in executive session but would prefer that we formally request this in a letter from the Director. He cautioned that even in executive session there was always the danger of leaks and the Director should try to tailor his remarks so that even in the event of leaks no serious damage would result. He also suggested that the Director caution the Subcommittee regarding the security problem, and Mr. Henderson said he would support anything the Director said on this score. Mr. Henderson brought up the question of a reporter, and we said this could be arranged if necessary.

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11. During the course of our discussion, Charles Johnson remarked that he had never heard any complaints by CIA personnel and that they apparently had the best machinery for handling grievances of any Government agency.



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